

giving AAA the same coordination rights within the Industrial Pool as other quasi-public safety services.

Respectfully submitted,

AMERICAN AUTOMOBILE ASSOCIATION

By: 

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September 5, 1997

CERTIFICATE OF SERVICE

I, Melissa S. Gross, do hereby certify that copies of the foregoing Motion of AAA for Leave to File Supplemental Comments were mailed, postage prepaid by first class mail, to each of the following this 5th day of September 1997:

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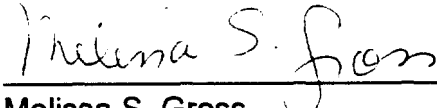
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Melissa S. Gross

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November 24, 1997

BY HAND DELIVERY

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

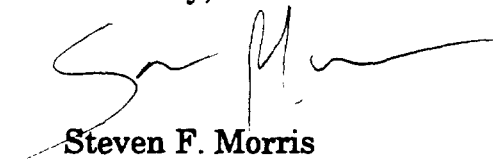
**Re: Ex Parte Presentation
PR Docket No. 92-235**

Dear Ms. Salas:

Pursuant to 47 C.F.R. § 1.1206(b)(1), enclosed please find two copies of a letter delivered today to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, from the undersigned on behalf of the American Automobile Association regarding AAA's Petition for Reconsideration in the above-referenced matter.

Please do not hesitate to call should you have any questions regarding this filing.

Sincerely,



Steven F. Morris

Enclosures

cc: Daniel Phythyon

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November 24, 1997

BY HAND DELIVERY

Daniel Phythyon
Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

Re: PR Docket No. 92-235

Dear Mr. Phythyon:

On behalf the American Automobile Association ("AAA"), we are writing to request that the Wireless Telecommunications Bureau (the "Bureau") issue an order stating that it will not process applications for licenses in the frequencies formerly reserved for the Automobile Emergency Radio Service ("AERS"), without the consent of AAA, pending a decision on the Petition for Reconsideration filed by AAA in the above-referenced docket on May 19, 1997. In addition, AAA would like to meet with you at your earliest convenience to discuss the issues raised in its Petition and in this letter.

In its *Second Report and Order* in this docket, the Commission placed the AERS frequencies in the "Industrial/Business" Pool, and found that any coordinator in this pool could assign an AERS frequency. In its Petition for Reconsideration, AAA requested that it be permitted to retain some level of control over coordination of the AERS frequencies, in the same way that the Commission permitted the coordinators for the Railroad, Petroleum and Power services to retain

Daniel Phythyon
November 24, 1997
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control over coordination of their frequencies. 1/ AAA explained that its primary role was protecting its members, as well as the general public, from harm to life and property while on the nation's roads, and that permitting other coordinators in the Industrial Pool to assign AERS frequencies would jeopardize AAA's ability to carry out this role.

In the Balanced Budget Act of 1997 (the "Budget Act"), Congress recognized the special public safety role played by AAA. The Budget Act generally expands the Commission's authority to assign licenses through competitive bidding when there are mutually exclusive applications. However, Congress specifically exempted licenses issued "for public safety radio services, including private internal radio services used by State and local governments and non-government entities and including emergency road services provided by not-for-profit organizations." 2/ Congress explained in the Conference Report that "[t]his service exemption also includes radio services used by not-for-profit organizations that offer emergency road services, such as the American Automobile Association (AAA). The Senate included this particular exemption in recognition of the valuable public safety service provided by emergency road services." 3/

In a Public Notice dated October 15, 1997, the Bureau allowed the refarming rules to take effect as scheduled on October 17, 1997, notwithstanding the pending petitions for reconsideration. 4/ In so doing, however, the Bureau acknowledged that the Budget Act, and the definitions of "public safety" contained therein, "may bear on future consideration of these and related rules."

1/ AAA's Petition included an alternative request to place the AERS frequencies in the "Public Safety" Pool. For a variety of reasons, AAA no longer believes this is an appropriate solution, and it hereby withdraws that request.

2/ Budget Act, § 3002(a)(2)(A).

3/ H.R. Report 105-217 at 572. The Conference Report also identifies other public safety radio services, including the Railroad, Petroleum and Power services.

4/ Public Notice, *Rules Adopted In The Refarming Second Report and Order (PR Docket No. 92-235) To Go Into Effect October 17, 1997*, DA 97-2208 (rel. October 15, 1997).

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In a presentation on November 7, 1997, at a meeting of the Land Mobile Communications Council, you echoed this view, stating that the Budget Act would have ramifications on a number of pending matters outside the auction context, including refarming. At the same time, however, you also stated that you did not anticipate that the Commission would release an order addressing substantive issues raised on reconsideration until the first or second quarter of 1998.

The timing you indicated for release of an order is disturbing to AAA because it creates the potential for the very harm described in AAA's Petition: increased interference on the AERS frequencies. This increased potential for interference will be particularly harmful to AAA, and those who rely on AAA, during emergencies and during peak traffic periods, when a prompt response is critical. Even if the Commission ultimately grants AAA's Petition, AAA still will be harmed if, in the interim, other coordinators in the Industrial Pool are permitted to assign AERS frequencies. AAA is unique in this regard, because the other Industrial Pool services identified by Congress as "public safety radio services" (Railroads, Power and Petroleum) were provided with some measure of control over coordination under the *Second Report and Order*, while AAA was not.

In light of the potential harm to AAA and auto clubs using the AERS frequencies, we think it is appropriate and necessary for AAA to be given additional control over coordination of the AERS frequencies pending reconsideration. Specifically, we ask that the Bureau issue an order stating that it will not process applications for AERS frequencies filed after October 17, 1997 unless AAA consents to the requested assignment. The requested action is consistent with the intent of Congress in adopting the Budget Act because it recognizes the special public safety role played by AAA and ensures that the Commission does not implement a regulatory regime that is later found to be inconsistent with congressional intent. At the same time, it does not interfere with the stated benefits associated with the refarming initiative. The vast majority of Industrial Pool frequencies would continue to be available through any Industrial Pool coordinator, and the AERS frequencies would be available in the same way as frequencies in the Railroad, Power and Petroleum services.

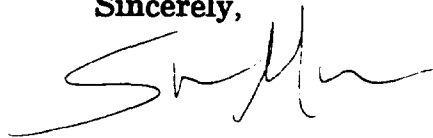
Procedurally, we think that the requested action can be implemented by the Bureau as a modification or update to its October 15 public notice. This would permit the Bureau to address AAA's concerns without ruling on any of the

Daniel Phythyon
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petitions for reconsideration or reaching a final determination on the significance of the Budget Act definitions. The only effect of this action would be to stay the effectiveness of this portion of the refarming order for the AERS frequencies. A proposed notice is attached.

As stated above, AAA would like to meet with you to discuss the issues raised in this letter and in their Petition for Reconsideration. Representatives of AAA can be available to meet at your convenience after the Thanksgiving holiday. I will contact your office to arrange such a meeting. Thank you for your cooperation on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Morris', with a long horizontal flourish extending to the right.

Steven F. Morris

Counsel for the American Automobile
Association

Enclosures

PUBLIC NOTICE

MODIFICATION OF PROCEDURES IN CONNECTION WITH RULES ADOPTED IN THE REFORMING SECOND REPORT AND ORDER (PR DOCKET NO. 92-235)

On February 20, 1997 the Commission adopted the *Second Report and Order* in PR Docket No. 92-235. By this action, the Commission consolidated the twenty Private Land Mobile Radio Services into two broad Pools -- Public Safety and Industrial/Business. Any frequency coordinator within the Industrial/Business Pool may coordinate any frequency within the Pool, except for frequencies previously in the Railroad, Power and Petroleum services, which must be coordinated by the American Association of Railroads, the Utilities Telecommunications Council and the American Petroleum Institute, respectively. These three entities were permitted to retain control over coordination in recognition of the impact their operations have on public safety.

As explained in a Public Notice dated October 15, 1997 (DA 97-2208), the rules adopted in the *Second Report and Order* took effect on October 17, 1997. The Bureau explained in that Notice that applications filed after October 17, 1997, would be subject to any future changes adopted by the Commission in connection with: (1) sixteen pending petitions for reconsideration of the *Second Report and Order*; and (2) the Balanced Budget Act of 1997 (1997 Budget Act), which, among other things, redefined the term "public safety" for certain purposes.

As a result of the 1997 Budget Act and the pending petitions for reconsideration, it is possible that entities identified as "public safety" by Congress may be entitled to some measure of control over coordination of frequencies that were within their exclusive control prior to the October 17, 1997, effective date of the rules adopted in the *Second Report and Order*. With one exception, auto emergency services, the *Second Report and Order* permits all services identified by Congress to retain control over coordination. To avoid implementing a regime that could later be found inconsistent with congressional intent, we find that it is necessary to provide a comparable degree of control over coordination to auto emergency services. Consequently, until the Commission rules on the pending petitions for reconsideration, the Bureau will not process an application for use of frequencies in the auto emergency radio services filed after October 17, 1997 unless the applicant or the party coordinating the frequency obtains the consent of the American Automobile Association (AAA), the frequency coordinator for the AERS frequencies.

Without reaching a final determination on the petitions for reconsideration or the proper interpretation of the Budget Act, we conclude that the above action is consistent with the public interest. By requiring that applicants obtain the consent of AAA before obtaining licenses for AERS frequencies we ensure that a service identified by Congress is not unduly burdened while we consider how to implement the 1997 Budget Act. At the same time, this action will not unduly interfere with the public benefits of the refarming initiative because of the limited number of frequencies involved, and the interim nature of the consent requirement.

By the Chief, Wireless Telecommunications Bureau

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December 15, 1997

BY HAND DELIVERY

Ari Fitzgerald, Esq.
Office of Chairman Kennard
Room 814
1919 M Street, N.W.
Washington, DC 20554

Re: Ex Parte
PR Docket No. 92-235
Consolidation of Private Land Mobile Services

Dear Ari:

As you requested at our meeting last Friday, please find copies of the Petition for Reconsideration filed by the American Automobile Association (AAA) in the above-referenced docket. I also have included subsequent pleadings filed by AAA in this proceeding, including: (1) AAA's Reply to Oppositions, (2) Supplemental Comments filed by AAA shortly after passage of the Balanced Budget Act of 1997; and (3) a recent *ex parte* letter requesting interim relief from the Bureau if an Order on Reconsideration is not imminent.

As we discussed, AAA's position has evolved from its initial Petition for Reconsideration. Specifically, AAA no longer is seeking to have the Auto Emergency frequencies placed in the Public Safety Pool. Rather, AAA is requesting only that it be given the same control over coordination as the coordinators for the "quasi-public safety" services identified by the Commission (Railroads, Power and Petroleum). As noted in AAA's Reply to Oppositions, this position is supported by the public safety community.

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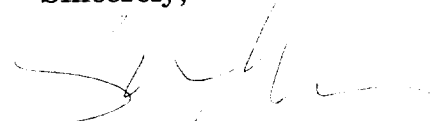
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*Affiliated Office

Ari Fitzgerald, Esq.
December 15, 1997
Page 2

Please do not hesitate to call should you need any additional materials
or if you have further questions.

Sincerely,

A handwritten signature in dark ink, appearing to read "Steven F. Morris", written over a horizontal line.

Steven F. Morris

Enclosures

cc(w/o encl): Dan Phythyon
D'Wana Terry
Susan Pikrallidas
Gary Ruark